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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/614,026  | 07/08/2003  | Toshiyuki Nozoe      | 43890-612           | 9079             |
| 7590  | 12/27/2004  |                      | EXAMINER            |                  |
| McDermott, Will & Emery<br>600 13th Street, N.W.<br>Washington, DC 20005-3096 |             |                      |                     | KWOK, HELEN C    |
|   |             | ART UNIT             | PAPER NUMBER        | 2856             |

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |              |   |
|------------------------------|-----------------|--------------|---|
| <b>Office Action Summary</b> | Application No. | Applicant(s) |   |
|                              | 10/614,026      | NOZOE ET AL. |   |
|                              | Examiner        | Art Unit     |   |
|                              | Helen C. Kwok   | 2856         | M |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 July 2003.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 20-37,39 and 40 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 20-37,39 and 40 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. 08/776,443.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 07/08/2003.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_ .  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_ .

**DETAILED ACTION**

***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No.

08/776,443, filed on April 17, 1997. ***Claim Objections***

2. Claims 32-33 and 39-40 are objected to because of the following informalities.

Appropriate correction is required.

In claim 32, line 1, the word – a – should be inserted before the word "frequency".

In line 2, the phrase "the frequency" should be changed to – a frequency --.

In claim 33, line 3, the word – said – should be inserted before the word "detection".

In claim 39, line 5, what is the word "it" referring to?

In claim 40, line 2, the word – said – should be inserted before the word "monitor".

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 20-27 and 39-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, line 14, the phrase "said drive means" lacks antecedent basis.

In claim 26, line 3, the phrase "detection part" lacks antecedent basis.

In claim 27, line 3, the phrase "the detection part" lacks antecedent basis.

In claim 28, line 2, the phrase "the driving" lacks antecedent basis. Also, what "driving"?

In claim 29, line 14, the phrase "said detection part" lacks antecedent basis. In line 20, the phrase "detection part" lacks antecedent basis.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**6.** Claims 20-37 and 39-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,244,095 (Nozoe et al.) or claims 1-10 of U.S. Patent No. 6,705,151 (Nozoe et al.) or claims 1-11 of U.S. Patent No. 6,732,586 (Nozoe et al.). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims presented in the above-mentioned references (all issued to Nozoe et al.) claim the features as presently claimed in the instant Application. For example, the claims in the references claim a sensor element having a vibrating part, a detector part; a drive circuit to supply a driving signal; a monitor circuit to provide a monitor signal; a detection unit including a pair of charging amplifiers or current amplifiers; a synchronous demodulator; an adjusting unit having an adjustor (i.e. attenuator) and an injector. Furthermore, the specification of all three of the Nozoe et al. references suggests and teaches the features and elements of the claimed invention. Therefore, the instant Application is not patentably distinct from the above-mentioned references.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen C. Kwok whose telephone number is (571) 272-2197. The examiner can normally be reached on 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Helen C. Kwok  
Art Unit 2856

hck  
December 13, 2004